O. Prisons/44

1944

File No.

Legal Department

A BRANCH

Subject:—

Opinions Under the Prisons Act 1894.

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1	O.No. 241 12-1-44	Sec 59(24) Whether petitions for Habeas Corpus made under sec. 491 Crim. Procedure Code can be transmitted by prisoners through Govt.	1-2

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Office of the R.L.A.

The first sentence of the third paragraph of the Registrar High Court's letter at page 31, dated 3-12-43, is a quotation fromHalsbury's Laws of England Vol. 9, p. 703, paragraph 1202. The second sentence, "A petition, therefore, by a person awaiting trial which is addressed to the High Court must be forwarded to the High Court direct and at once", is not to be found in Halsbury and I do not know of any authority for that statement. I have not been able to trace any English authority regarding the manner of transmission of a prisoner's petition for a writ of habeas corpus. The present matter seems to be chiefly in regard to the manner of transmitting to the High Court applications for orders under section 491 of the Code of Criminal Procedure. Orders under the section correspond to the English writ of habeas corpus. Government of course admits that the petition must not be withheld and that there will be no undue delay in forwarding it. The manner of its transmission, whether direct or through Government, seems to be a matter for Government to dicide, since regulation of the transmission of appeals and petitions from prisoners is a matter for Government to prescribe under section 59(24) of the Prisons Act, 1894. Attention is invited to that section. The fact that the petition is forwarded through Government is hardly a grave invasion of the High Court's constitutional rights. The procedure suggested by Secretary Home Department does not seem to encroach on the High Court's rights.

Under section 59(24) of the Prison Act, Government have prescribed rules for the transmission of petitions and appeals. They are to be found in

Chapter VIII of the

However they deal mostly with appeal petitions to courts and petitions to Government. Appeal petitions are to be "forwarded without delay" to the appellate court. There is no rule dealing with applications for order under section 491 of the Criminal Procedure Code. Rule 449 of the above Manual seems to claim for Government the right to withhold a revision petition addressed to a court once there is in existence the final order of an appellate Court. But it is doubtful whether the power to regulate the transmission of petitions gives the power to withhold and it seems unwise to make any use of that rule in the present matter.

Sd./ P.N.Woos 12-1-44

U.R. to H.D.No. 241, dated the 12th January 1944.

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